

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 2554 OF 2005

Nirmal Nagar Bhadekaru Sangh
(Regd.) and others.

... Petitioners

Versus.

State of Maharashtra & others.

... Respondents.

Shri M.J.Jamdar for the Petitioners.

Shri R.M.Sawant, A.G.P. for Respondents Nos.1 to 3.

Shri G.D.Utangale for Respondent No.4.

Ms.P.A.Purandare for Respondent No.5.

Shri Chaurasia holding for Shri A.M.Sarogi for
Respondents Nos.6 and 7.

**CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.**

DATED : 12th JANUARY, 2006.

P.C.:

1. Heard Shri Jamdar in support of this petition.

Shri Sawant, Govt. Pleader appears for Respondents Nos.1, 2 and 3. Shri Uttangale appears for Respondent No.4. Ms.Purandare for Respondent No.5. Shri Chaurasia for Respondents Nos.6 and 7. The petition seeks to challenge the construction which is being put up by Respondents Nos.6 and 7 between two buildings bearing No.4 and 9 situated in an area known as Nirmal Nagar, Bandra East, Mumbai. The submission of the Petitioner is that a 56 feet wide D.P.Road is being blocked and the area of the road is being used for construction as also the open space between the two buildings. The

submission is that such a construction should not have been permitted by Respondents Nos.1 to 4 which is supposed to have been permitted for rehabilitation of slum dwellers.

2. It is however material to note that Petitioner No.1 had filed a petition earlier bearing Writ Petition No.1816 of 2001. A protective order has been passed in that matter earlier. However, after obtaining the report of the Architects appointed by the Court, the Division Bench by its order dated 3rd October 2003 dismissed that petition. The petition was dismissed mainly because, according to the Court, the Petitioners failed to prove their locus-standi, the injury caused to the Petitioners by this construction and on reading of the report it was understood to be causing no injury like entry to the road, access etc. to the Petitioners.

3. The order was challenged in the Apex Court in a Petition for Special Leave No.3526 of 2004. The petition was however withdrawn with a view to avail of other alternative remedy.

4. It appears that the Petitioners cannot file a suit by way of an alternative remedy since such a remedy is not available against the scheme developed by the SRA. A representation was, therefore, made on 10th October 2005 drawing attention to the fact that the

construction was being made on the 56 feet wide D.P.road. No reply has been received to this representation. We are, however, of the view that the Petitioners should file a proper representation, if they want to file one, by way of an alternative remedy to Respondents Nos.2 and 3 as well as to Respondent No.4 pointing out precisely as to how the construction is contrary to the Regulation governing the development and how it affects the rights of the occupants of the two buildings. Shri Jamdar is agreeable to make such a representation which would be made within one week. In view of the fact that the Apex Court has permitted the Petitioners to resort to such an alternative remedy, we expect Respondents Nos.2 to 4 to consider the representation in all seriousness. It will be open to Respondents Nos.6 and 7 to file their reply to this representation. Copy of this representation will be made available by the Petitioners to Respondents Nos.6 and 7 within a week as well. For Respondents Nos.2 and 3 it will be the Chief Officer of the Mumbai Board who will take decision. The Petitioners will make this representation within one week with a copy to the Respondents Nos.6 and 7. Respondents Nos.6 and 7 will file their reply within a week thereafter with a copy to the Petitioners. The Chief Officer of the Mumbai Board will decide the representation and the reply within two weeks thereafter and the decision will be conveyed to

Respondent No.4 as well as to the Petitioners and Respondents Nos.6 and 7. Respondent No.4 will take decision within two weeks from the receipt of the decision from the Mumbai Board. It will be open to the Petitioners or Respondents Nos.6 and 7 to challenge the decision in the event it is adverse to either of them. Respondents Nos.6 and 7 will hold back their construction activity during this period of six weeks.

Petition stands disposed of.

(H.L.GOKHALE, J.)

(Abhay S.Oka, J.)